

prior board. If that right were reserved, then the power of the new board is a continuing one and the right to the pension is not vested to the extent of limiting that power. On the other hand, if the rules and regulations of the old board were such as to recognize the continuing right to the pension, or if those rules contain no reserved right of amendment or repeal, then the status of the pensioner became fixed in such a way as to render the board thereafter powerless to make a change.

The only distinction that I am able to make between the right of the state itself to alter and amend existing pensions and that of a board of trustees vested with full power to make rules and regulations with reference thereto is that the state cannot preclude itself by any commitment so far as pensions are concerned from altering or repealing the authority for such pensions, whereas the board of trustees, in order to preserve its right of amendment and repeal must, at the time of the granting of the pension, have an existing rule and regulation specifically making such reservation. Unless the reservation be made, the trustees have exhausted their authority when they have once fixed the qualifications and the amount to be paid and any action thereafter taken attempting to change the status would be of no force and effect.

In view of the foregoing and in specific answer to your questions, It is my opinion that:

1. Under the provisions of Sections 4600, et seq., General Code, as amended by the 88th General Assembly in Senate Bill No. 79 (113 O. L. 61), the trustees of the firemen's pension fund may be created by council selecting two members, which said two members may conduct the election of the two members of said board to be elected from the membership of the fire department, including the giving of notice and canvassing the vote.

2. It was the intention of the legislature in the enactment of Senate Bill No. 79 (113 O. L. 61) to preserve the pensionable status of beneficiaries of firemen's pension funds existing under the provisions of laws prior to the enactment of such bill, and the board of trustees of firemen's pension funds created pursuant to such act are without authority to alter, reduce or revoke pensions heretofore granted in the absence of a specific reservation of said right in the rules and regulations of the board of trustees originally granting such pensions at the time the pensionable status was determined.

Respectfully,

GILBERT BETTMAN,
Attorney General.

1332.

BONDS—AUTHORIZED BY SCHOOL DISTRICT ELECTORS PRIOR TO EFFECTIVE DATE OF UNIFORM BOND ACT—PROCEDURE FOR THEIR ISSUE AT PRESENT TIME—FUNDS TO BE APPLIED TO ORIGINAL PURPOSES—MAXIMUM MATURITY—RECOMMENDED PROCEDURE.

SYLLABUS:

1. *When bonds have been lawfully authorized to be issued by the electors of a school district in 1921 under the law then in force and effect, the board of education of such school district may now proceed to issue such bonds under authority of such election.*

2. *Such bonds should be issued pursuant to Sections 2293-25 and 2293-26, offered to the trustees of the sinking fund as provided in Section 2293-27 and in the event such offer is not accepted, advertised and sold as provided in Sections 2293-28 and 2293-29, General Code.*

3. *When such authorization by the electors in 1921 was for the purpose of acquiring real estate and erecting a school building, in the event the board of education should now;*

under the provisions of Section 20 of the Uniform Bond Act, issue such bonds under the provisions of Sections 2293-25 to 2293-29, General Code, inclusive, the entire amount of the proceeds of such issue may not be expended for the construction of a school building, although the acquisition of real estate may not now be desirable.

4. *The provisions of Section 7630, as in force and effect prior to amendment in 109 Ohio Laws, relating to the maximum maturity of such bonds, are applicable.*

5. *Under the circumstances, since bonds now issued pursuant to authorization of the electors of a school district in 1921 are payable by a tax levy within the fifteen mill limitation, which may result in seriously curtailing the legitimate and necessary functions of the board of education, on account of reducing the funds available for operating expenses, the better procedure would be to re-submit to the electors at the next general election the question of issuing bonds in the amount and for the purpose desired under the provisions of the Uniform Bond Act.*

COLUMBUS, OHIO, December 26, 1929.

HON. HARRY K. FORSYTH, *Prosecuting Attorney, Sidney, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

“On March 17, 1921, a special election was held in Clinton Township Rural School District, this county, on the question of issuing \$40,000 of bonds for the purpose of acquiring real estate and erecting a school building. This was done under authority of Section 7625, General Code (102 Ohio Laws, page 419). On the canvass of the vote it was found that the proposition had carried.

On June 25, 1921, action was brought in Common Pleas Court of this county praying that the Board of Education of the school district be enjoined from issuing the bonds as authorized by said election. The defendants demurred to the petition, which demurrer was sustained and the plaintiff then appealed. On April 16, 1924, the Court of Appeals dismissed the demurrer at the plaintiff's costs. The school board of this district has taken no further action with regard to the issuance of bonds since that time, but now desire to issue these bonds for the purpose of erecting a modern school building, and they have submitted to me the question whether they would be authorized so to do under the authority of the election held on March 17, 1921.

On examining the statutes, I find that Section 7625, et seq. as existing at the time of the election, has been amended from time to time, particularly by the Uniform Bond Act passed in 1927 (112 O. L., 380, 385). Section 20 of the Uniform Bond Act at page 385 provides as follows:

‘Bonds issued prior to the effective date of this act and bonds issued after said date, which have been approved by vote of the people, or by resolution of the taxing authority prior to the day this act is filed with the Secretary of State, shall be valid obligations of the taxing district issuing the same if they would be valid under the provisions of law in effect prior to the passage of this act. Bonds which have been approved by vote of the people prior to the effective date of this act, may be issued thereafter under the provisions of Section 2293-25 to 2293-29, inclusive. Tax levies, in anticipation of which any such bonds have been issued, shall be levied notwithstanding the repeal of the law authorizing such levies.’

It would appear that said section would authorize the board to now proceed with the issuance of the bonds heretofore authorized by the election unless there is some statute which has not come to my attention, limiting the time in which a board may exercise the authority given by vote to issue bonds.

And it would further appear that Section 26 of the General Code would not apply in this case requiring the board to follow the old bond law since Section 20 definitely authorizes proceeding under Section 2293-25 to 2293-29.

The original resolution prior to the election provided for an issue of \$40,000 bonds for acquiring real estate and erecting a school building and it did not specify how much should be used for each purpose. The law at that time authorized the maximum maturity of forty years. There is this additional fact, that since the election authorizing this bond issue, some territory has been added to the district and some territory has been taken from the district, but the area and population have remained nearly the same and the duplicate has increased in the amount of nearly \$400,000.00.

On this state of facts, I wish to submit to you the following questions:

(1) Can the board of education now proceed to issue said \$40,000 bonds under authority of the election of March 17, 1921?

(2) If so, shall the board follow the provisions of 2293-25 to 2293-29, inclusive?

(3) Can the school board issue the entire amount for building if additional real estate is not desired?

(4) Will the maximum maturity of the bonds be regulated by the present Uniform Bond Act or will the old law apply?

I request that you furnish me an opinion on those questions at your early convenience, as the board wishes to issue and sell the bonds if they may legally do so, in time to let a contract for a new building about the first of the year."

I assume, although you state "the Court of Appeals dismissed the demurrer", that the judgment was for the board of education, and this opinion is predicated upon that assumption.

Section 7625, General Code, as in force and effect in 1921, provided that "when the board of education of any school district determines that * * * it is necessary to purchase a site or sites to erect a school house or houses * * * and that a bond issue is necessary, the board shall * * * submit to the electors of the district the question of issuing bonds * * *." I assume it is upon the passage of such a resolution that the electors of the school district in question on March 17, 1921, authorized the issuance of bonds as set forth in your letter. These statutes relative to the issuance of bonds by school districts as well as by other subdivisions have, as you state, been substantially changed several times since the authorization of this issue. An answer to your first question necessitates a consideration of the provisions of Section 26, General Code, which are as follows:

"Whenever a statute is repealed or amended, such repeal or amendment shall in no manner affect pending actions, prosecutions, or proceedings, civil or criminal, and when the repeal or amendment relates to the remedy, it shall not affect pending actions, prosecutions, or proceedings, unless so expressed, nor shall any repeal or amendment affect causes of such action, prosecution, or proceeding, existing at the time of such amendment or repeal, unless otherwise expressly provided in the amending or repealing act."

This office has frequently had occasion to consider this section as applicable to pending proceedings leading up to the issuance and sale of bonds. In an opinion of my predecessor appearing in Opinions of the Attorney General for 1927, Vol. II, p. 1357, it was held that in the case of a road improvement a proceeding is "pending" within the meaning of Section 26, General Code, when a board of county commissioners makes application for state aid under the provisions of Section 1191 of the General

Code as in force and effect prior to the effective date of the Norton-Edwards Act, as passed by the 87th General Assembly. This opinion has been approved and followed in a number of subsequent opinions of this office. In the case of *Toledo vs. Marrow*, 8 O. C. C. (N. S.) 121, it was held that a preliminary resolution declaring the necessity for a street improvement was the beginning of a proceeding and that notwithstanding the fact that the law had been amended concerning assessments prior to the passage of the resolution determining to proceed, under the provisions of Section 26 the amended law had no application to the assessments subsequently made to pay for the improvement. This case was affirmed by the Supreme Court of Ohio in 75 O. S. 574. See also *State, ex rel. Johnson vs. Chandler, Auditor*, 105 O. S. 499; *State, ex rel. vs. Weiler*, 113 O. S. 443; *State, ex rel. vs. Ach*, 113 O. S. 482.

I have little difficulty in concluding that, upon the passage of the resolution by the board of education declaring the necessity of the bond issue and the subsequent authorization of such bonds by the electors of the district, the proceeding is pending within the meaning of Section 26, supra.

Specifically answering your first question, I am of the opinion that when bonds have been lawfully authorized to be issued by the electors of a district in 1921 under the law then in force and effect, the board of education of such school district may now proceed to issue such bonds under authority of such election.

Your second question involves a consideration of Section 20 of the Uniform Bond Act, quoted in your letter. It is therein expressly provided that bonds which have been approved by vote of the people prior to the effective date of the Uniform Bond Act "may be issued thereafter under the provisions of Sections 2293-25 to 2293-29, inclusive." Section 2293-25 authorizes the issuance of notes in anticipation of the issuance of bonds and provides for a tax levy for their payment. Section 2293-26 provides that the resolution authorizing bonds shall fix the amount to be presently issued which shall not be greater than the amount authorized, that such resolution shall fix the purpose of the issue in accordance with the prior resolution or ordinance of the taxing authority, the date, rate of interest and maturity which, however, need not be the same as those fixed in the prior resolution or ordinance. This section further provides that the bond resolution or ordinance shall provide for a tax levy as therein specified. Sections 2293-27 to 2293-29, General Code, relate to the offering of bonds or notes to the sinking fund trustees and their subsequent sale. I am of the view that the bonds in question should be issued pursuant to Sections 2293-25 and 2293-26, offered to the trustees of the sinking fund as provided in Section 2293-27 and in the event such offer is not accepted, advertised and sold as provided in Sections 2293-28 and 2293-29.

Coming now to your third question, if, under Section 20 of the Uniform Bond Act, the board of education should issue these bonds under the provisions of Sections 2293-25 to 2293-29, General Code, inclusive, it is expressly provided in Section 2293-26 that "the taxing authority shall adopt a resolution or ordinance determining whether the bonds are to be issued in one lot or in installments, and fixing the amount of the bonds to be presently issued which shall not be greater than the amount authorized; *fixing their purpose in accordance with the prior resolution or ordinance of the taxing authority.*" (Italics the writer's.)

I am of the view that it was the intent of the Legislature in the enactment of the Uniform Bond Act, when a resolution declaring the necessity of a bond issue for a given purpose is passed and such issue is authorized by vote of the electors, that the purpose of the issue may not, subsequent to such election, be changed by the taxing authority. This view is strengthened by a consideration of Section 2293-10, General Code, wherein it is provided inter alia:

** * * The amount expended from the proceeds of the bonds for any purpose or purposes falling within any class shall not exceed the amount

allotted in said schedule to said class; provided, however, that whenever the bond issuing authority deems such transfer to be necessary for the carrying out of the purpose of the bond issue, then *such authority may transfer any unexpended portion* of the amount allotted to any class from the class to which it was originally so allotted to any class with a longer maturity and, upon such transfer, the amount expended for any purpose or purposes falling within the class to which such transfer has been authorized may include the amount so transferred; but no transfer may be made from any class to a class with a shorter maturity. * * *” (Italics the writer’s.)

Specifically answering your third question, I am of the opinion that when such authorization by the electors in 1921 was for the purpose of acquiring real estate and erecting a school building, in the event the board of education should now, under the provisions of Section 20 of the Uniform Bond Act, issue such bonds under the provisions of Sections 2293-25 to 2293-29, General Code, inclusive, the entire amount of the proceeds of such issue may not be expended for the construction of a school building, although the acquisition of real estate may not now be desirable.

The views expressed in answer to your first question bearing upon the applicability of Section 26 of the General Code are dispositive of your fourth question. The maximum maturity of bonds issued or authorized in 1921 having been forty years from the date of such issue, this provision would govern the maturity of this issue. There is no question but that although issued under the provisions of the law as then in force and effect, it is not now and was not then necessary that bonds be issued with the maximum maturity then provided. The provisions of Sections 2293-9, 2293-10 and 2293-12, General Code, bearing upon the period of time that bonds issued by any subdivision shall run, and the date of earliest and latest maturity, are not applicable when these bonds are now issued under the provisions of Sections 2293-25 to 2293-29, inclusive, as provided in Section 20 of the Uniform Bond Act. Sections 2293-25 to 2293-29, inclusive, have no bearing upon the maturities.

Specifically answering your fourth question, I am of the opinion that the provisions of Section 7630 as in force and effect in 1921, relating to the maximum maturity of such bonds, are applicable.

Upon a consideration of all of the foregoing as bearing upon the matter of now issuing bonds in the amount of \$40,000 pursuant to authorization by the electors of this school district in 1921, there are several other factors which should not be overlooked. It must be borne in mind that the tax levy necessary to meet the interest and principal requirements of these bonds must be within the fifteen mill limitation. While bonds authorized and issued by a vote of the electors under the provisions of the Uniform Bond Act are payable by a tax levy outside the fifteen mill limitation, such is not the case when bonds are issued under the provisions of Sections 7625 and 7626 as in force and effect in 1921. In an opinion of this office, appearing in Opinions of the Attorney General for 1915, Vol. I, p. 544, the second branch of the syllabus is as follows:

“If the funds at its disposal, or that can be raised under Section 7629, G. C., would not be sufficient, the board may submit the proposition to the electors in conformity with the provisions of Section 7625, G. C., et seq., the tax levy for such bonds and interest being outside the five mill and ten mill limitations, but within the fifteen mill limitation of the Smith law.”

See also *Rabe vs. Board of Education*, 88 O. S., 403.

In the event bonds are issued under authority of the election already had on the question, after such issuance, the question of exempting a levy for their redemption and interest from the fifteen mill limitation can, of course, be submitted to the electors under the provisions of the Budget Law. If the levy should, however, fail to carry

by the required majority, the tax within the fifteen mill limitation for retirement and interest purposes required by Section 11, Article XII of the Ohio Constitution, would probably have the effect of reducing the amount available to the board of education for operating expenses.

The further matter not to be overlooked is, of course, the question of the marketability of the issue and in the event the tax necessary for retirement and interest purposes within the fifteen mill limitation appears to seriously curtail the expenditure of funds for current operating expenses of the district, this may have a serious bearing upon the matter of marketability and upon the interest rate which the board may be required to pay on the issue. A somewhat similar question was presented to my predecessor in an opinion appearing in Opinions of the Attorney General for 1927, Vol. III, p. 1742, to which you are referred. The syllabus is as follows:

"1. A \$600,000.00 bond issue properly authorized by vote of the electors of a municipality at the August, 1923, primary election, but never issued because of tax limitations, may now be issued, and the issuance thereof is a condition precedent to submitting the question of the exempting of a levy for the redemption of such bonds and for the interest from the fifteen mill limitation at the November, 1927, election under the provisions of Sections 15, et seq., of House Bill No. 80, passed by the 87th General Assembly on April 13, 1927.

2. The better procedure would be to submit the questions both of issuing the bonds and exempting the levy at the same election and on the same ballot under the provisions of Sections 2293-19 to 2293-23, General Code, both inclusive, as enacted by the 87th General Assembly in House Bill No. 1, passed April 21, 1927."

It is my opinion that under the circumstances, since bonds now issued pursuant to authorization of the electors of a school district in 1921 are payable by a tax levy within the fifteen mill limitation, which may result in seriously curtailing the legitimate and necessary functions of the board of education, on account of reducing the funds available for operating expenses, the better procedure would be to resubmit to the electors at the next general election the question of issuing bonds in the amount and for the purpose desired under the provisions of the Uniform Bond Act.

Respectfully,

GILBERT BETTMAN,
Attorney General.

1333.

APPROVAL, CONTRACT BETWEEN STATE OF OHIO AND HERMAN C. WELLER, COLUMBUS, OHIO, FOR CONSTRUCTION OF SHELTER LODGE AT SERPENT MOUND, ADAMS COUNTY, FOR OHIO ARCHAEOLOGICAL AND HISTORICAL SOCIETY AT AN EXPENDITURE OF \$4,432.00—SURETY BOND EXECUTED BY THE GLOBE INDEMNITY COMPANY OF NEW YORK.

COLUMBUS, OHIO, December 26, 1929.

HON. RICHARD T. WISDA, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by the Department of Public Works, for the Ohio Archaeological and Historical Society, and Herman C. Weller, of Columbus, Ohio. This contract covers